Supreme Court, U.S.
FILED
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

MUAZZAM MOHAMMAD LATEEF,

Petitioner,

v.

JOHN ASHCROFT,
U.S. Attorney General,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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Questions Presented For Review

Did the United States Court of Appeals err by denying Petitioner's Petition for Review based on the following erroneous findings: (1) that the Board of Immigration Appeals did not err by denying Petitioner's request to withdraw his plea to the Notice of Appear; (2) that the Board of Immigration Appeals did not err by admitting certain evidence over Petitioner's objections; (3) that section 321 of the Immigration and Nationality Act [8 U.S.C. § 1432] does not violate Petitioner's rights under the Due Process clause of the 5th Amendment of the U.S. Constitution; and (4) that Petitioner's Due Process rights under the Fifth Amendment were not violated by the summary dismissal of Petitioner's appeal to the Board of Immigration Appeals?

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Opinions Below

The unpublished Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit dated April 1, 2004, is set forth in the Appendix at page 1.

The unpublished Judgment of the United States Court of Appeals for the Ninth Circuit dated April 1, 2004, is set forth in the Appendix at page 5.

The unpublished Decision of the Board of Immigration Appeals dated June 10, 2002, is set forth in the Appendix at page 6.

The unpublished Oral Decision and Order of the Immigration Judge of the U.S. Immigration Court dated October 16, 1998, is set forth in the Appendix at page 7.

The unpublished Memorandum of Decision and Order of the U.S. Immigration Court dated October 22, 1990, is set forth in the Appendix at page 14.

The unpublished Order of the United States Court of Appeals for the Ninth Circuit, dated May 25, 2004, denying rehearing, is set forth in the Appendix at page 16.

Statement of Jurisdiction

The judgment of the United States Court of Appeals was entered on April 1, 2004. The order of the United States Court of Appeals denying rehearing was filed on May 25, 2004. This Court has jurisdiction to review the judgment of the Court of Appeals pursuant to 28 U.S.C. § 1254(1).

Constitutional Provisions at Issue

The question presented for review implicates the following provision of the Constitution of the United States:

Amendment V

No person shall be ...deprived of life, liberty, or property without due process of law ....

Statutory Provisions at Issue

The question presented for review implicates the following statutory provision:

> Section 321(a), Immigration and Nationality Act, 8 U.S.C. § 1432
>
> A child born outside of the United States of alien parents ... becomes a citizen of the United States upon fulfillment of the following conditions:
>
> (1) The naturalization of both parents; and
>
> (4) Such naturalization takes place while such child is under the age of eighteen years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection . . . .

Statement of the Case

This case involves a judgment issued by the United States Court of Appeals for the Ninth Circuit on April 1, 2004, denying Petitioner's Petition for Review of an Order of Removal issued by an Immigration Judge and affirmed by the Board of Immigration Appeals.

Petitioner is a native of Pakistan and citizen of Pakistan, who was admitted as a lawful permanent resident of the United States on May 14, 1979. Petitioner is

married to a United States citizen and has extensive ties to the United States. Petitioner's parents, brother, and sister are United States citizens. Petitioner has never received public assistance of any type and has been gainfully employed for the past several years.

In 1989, Petitioner was convicted of burglary in Texas. As a result of the conviction, Petitioner appeared before the Immigration Court in Texas in 1990. Petitioner was represented by the same attorney, Harold Tillman, who had handled his criminal case. Mr. Tillman informed Petitioner that he was an experienced practitioner of immigration law. However, at Petitioner's final hearing before the Immigration Court, Mr. Tillman failed to submit any documents, such as character letters or college transcripts, in support of Petitioner's application for relief pursuant to section 212(c) of the Immigration and Nationality Act, 8 U.S.C. § 1182. Moreover, Mr. Tillman failed to advise Petitioner that he had the right to call witnesses to testify on his behalf. As a result, on October 22, 1990, the Immigration Judge denied Petitioner's application for section 212(c) relief. At the merits hearing, Mr. Tillman reserved Petitioner's right to appeal the Immigration Judge's decision. Unfortunately, Petitioner was never informed by Mr. Tillman as to the outcome of the appeal, or whether an appeal was ever filed.

On March 3, 1998, Petitioner appeared before Immigration Judge Ipema in Los Angeles represented by an attorney, Mark Castleman. As a result of his inexperience, Mr. Castleman admitted factual allegations five through eight contained in the Notice to Appear. On October 16, 1998, the Immigration Judge ordered Petitioner removed from the United States.

On November 12, 1998, Petitioner filed a timely notice of appeal with the Board of Immigration Appeals

("Board"). On June 10, 2002, the Board issued a summary decision affirming without opinion the decision of the Immigration Judge.

On July 9, 2002, Petitioner filed a timely Petition for Review with the United States Court of Appeals. The United States Court of Appeals had jurisdiction to review the decision of the Board under 8 U.S.C. § 1252.

On April 1, 2004, the United States Court of Appeals denied the Petition for Review. On May 17, 2004, Petitioner filed a timely Petition for Panel Rehearing and Request for Stay of Deportation with the United States Court of Appeals. On May 25, 2004, the United States Court of Appeals denied the petition for rehearing.

Reasons for Granting the Writ

This Court should grant the writ of certiorari and review the decision of the Ninth Circuit Court of Appeals in this case. The issues presented by Petitioner are reviewed using the abuse of discretion standard. Abuse of discretion occurs when an agency or court inexplicably departs from prior precedent, departs from its own regulations, fails to consider all relevant factors, or considers irrelevant factors. *Lal v. INS*, 255 F.3d 998, 1006-1007 (9th Cir. 2001).

A. Request to Withdraw Plea

On March 3, 1998, and June 2, 1998, Petitioner was represented by his former attorney, Mark Castleman. On March 3, 1998, Mr. Castleman admitted allegations five, six, seven, and eight contained in the Notice to Appear. Based on these admissions, Mr. Castleman severely damaged Petitioner's case before the Immigration Court. Moreover, Mr. Castleman's statements at the hearing

illustrate that he was unfamiliar with the charging document and did not know how to enter a plea to the Notice to Appear.

On October 16, 1998, Petitioner made a motion to withdraw his former counsel's previous plea to the allegations contained in the Notice to Appear based on the inexperience of his former counsel. Petitioner informed the Immigration Court that he intended to exercise his right to deny all of the allegations and the charge of removability. Yet, the Immigration Judge erred by denying Petitioner's motion. The Immigration Judge stated that he did not find sufficient cause to allow Petitioner to withdraw his pleadings. In addition, the Immigration Judge noted that Petitioner was duly represented and bound by his former attorney's decision to admit the factual allegations.

The Immigration Judge erred by concluding that Petitioner was duly represented and bound by his former attorney's decision. On March 3 and June 2, 1998, Mr. Castleman failed to demonstrate a basic understanding of immigration law and removal proceedings. A competent attorney would not have admitted allegations five through eight, which severely weakened Petitioner's case before the Immigration Court. The Immigration Judge should have afforded Petitioner the benefit of representation by competent counsel by affording Petitioner the opportunity to withdraw his former counsel's plea. Therefore, the Immigration Judge abused his discretion by denying Petitioner's motion to withdraw Mr. Castleman's admissions.

The United States Court of Appeal, like the Board of the Immigration Appeals, found that the Immigration Judge did not engage in abuse of discretion on this issue.

In addition, in its denial of the Petition for Review and Petition for Panel Rehearing, the United States Court of

Appeals overlooked the material fact of Petitioner's ineffective assistance of counsel that preceded his initial order of deportation on October 22, 1990. In his Petition for Review to the United States Court of Appeals, Petitioner discussed the prejudice that resulted from Mr. Tillman's complete failure to call any supporting witnesses or provide the Immigration Court with documents in support of Petitioner's application for section 212(c) relief. But for this prejudice, Petitioner would not have been subject to an order of deportation prior to his removal proceedings in Los Angeles, California.

These circumstances are similar to the facts of *United States of America v. Ubaldo-Figueroa*, 347 F.3d 718 (9th Cir. 2003). In that case, the United States Court of Appeals considered whether Ubaldo-Figueroa had been prejudiced by the due process violations in the underlying removal proceeding. The United States Court of Appeals held that to establish prejudice, Ubaldo-Figueroa did not have to show that he actually would have been granted relief; instead, he must only show that he had a "plausible" ground for relief from deportation. *Id.*

Petitioner requests this Court to consider whether he was prejudiced by the due process violations of his underlying removal proceeding. Had Mr. Tillman followed the general practice of calling witnesses and submitting supporting documents, Petitioner would have been granted section 212(c) relief. The order of deportation that resulted from Mr. Tillman's ineffective assistance of counsel served as the only basis for Petitioner's order of removal from the Immigration Court in Los Angeles, California.

B. Admission of Exhibits

The Immigration Judge erred by overruling Petitioner's objections regarding the admissibility of

exhibits two, five, and six. The Immigration Judge should not have admitted these exhibits when the source and accuracy of the information contained in these exhibits were highly questionable.

With exhibit two, the Immigration Judge erred by overruling Petitioner's objection regarding the document's inaccurate date of birth. Petitioner testified that his date of birth was September 24, 1968, not September 24, 1966. Petitioner explained to the Immigration Judge the circumstances surrounding the incorrect date of birth contained in exhibit two. Petitioner explained to the Immigration Judge that when his parents ordered his birth certificate from Pakistan, the document contained the incorrect date of birth. To avoid further delay, Petitioner's parents used the incorrect date of birth on Petitioner's visa application. The Immigration Judge denied Petitioner's objection without due consideration.

Regarding exhibit five, the Immigration Judge engaged in an abuse of discretion by not finding that Form I-294 was entirely inaccurate. According to exhibit five, Petitioner was prevented from entering or being in the United States "[a]t any time because you have been found ... deportable under section 237 of the Act [8 U.S.C. § 1127], and ordered deported or removed from the United States, and you have been convicted of a crime designated as an aggravated felony." However, based on the record of proceedings, there is no evidence that Petitioner was ordered deported from the U.S. based on a crime designated as an aggravated felony. This designation is critical, since an alien removed based on an aggravated felony is permanently barred from reentering the United States pursuant to section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182.

Regarding exhibit six, the Immigration Judge erred by admitting Form I-213 into evidence despite serious questions as to the source of its information. In the document, a U.S. Immigration and Naturalization Service officer describes the time, place, and manner of Petitioner's entry without any indication of the source of this information. Throughout the document, the officer uses phrases such as Petitioner "admits," "states," and "claims," to indicate the source of facts and statements contained in the document. Although, the officer fails to indicate where he obtained the information relating to Petitioner's time, place, and manner of entry. The Immigration Judge assumed that the officer based these conclusions on the Petitioner's admissions. However, the Immigration Judge had no factual grounds on which to base this assumption and, thus, in the process abused his discretion.

The United States Court of Appeal, like the Board of the Immigration Appeals, found that the Immigration Judge did not engage in an abuse of discretion on this issue. This Court should reverse the United States Court of Appeals' decision as to the admissibility of exhibits two, five, and six.

C. Analysis of Claim to U.S. Citizenship

Section 321(a) of the Immigration and Nationality Act provides in relevant part:

> A child born outside of the United States of alien parents ... becomes a citizen of the United States upon fulfillment of the following conditions:
>
> (1) The naturalization of both parents; and
>
> (4) Such naturalization takes place while such child is under the age of eighteen years; and

(5) Such child is residing in the United States pursuant to
a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection ....

Petitioner satisfies clause (1) and clause (5) of section 321. Petitioner's mother became a naturalized citizen of the United States in 1985; his father naturalized in 1989. Thus, both of Petitioner's parents naturalized as required by clause (1). In addition, as required by clause (5), Petitioner was residing in the United States pursuant to lawful admission in 1989, which was the time of naturalization of the parent last naturalized under clause (1).

However, clause (4) of section 321 requires the naturalization of both parents to occur while the child is under the age of eighteen. Petitioner was born on September 24, 1968, while his father naturalized in 1989. Prior versions of U.S. immigration laws granted automatic acquisition of citizenship through naturalization of parents as long as the requisite conditions were satisfied while the child was under the age of twenty-one. Until 1941, a child automatically acquired citizenship if either parent naturalized while the child was under twenty-one years of age. *See* Section 5, Immigration and Nationality Act (1907), as amended by Section 2, Immigration and Nationality Act (1934).

This Court should find that clause (4) of section 321 violates the Due Process clause of the U.S. Constitution. The Fifth Amendment's Due Process clause has been interpreted to bar arbitrary discrimination by the federal government, such as irrational distinctions between

similarly-situated noncitizens. *See Francis v. INS*, 532 F.2d 268 (2d. Cir. 1976), *Yeung v. INS*, 76 F.3d 337 (11th Cir. 1995). Section 321 treats similarly-situated people inequitably by requiring parents who naturalized after January 1941 to naturalize while their child is under the age of eighteen. This Court should find that section 321 violates Petitioner's rights under the Due Process clause contained in the Fifth Amendment. The Fifth Amendment's due process clause protects against government action infringing on fundamental liberty interests, no matter what process is provided, where the infringement is not narrowly tailored to serve a compelling interest. *See Reno v. Flores*, 507 U.S. 292 (1993). In the present case, section 321 infringes on Petitioner's rightful claim to U.S. citizenship by setting an age requirement that is not narrowly tailored to serve a compelling interest. The Court should find that lowering the age requirement from twenty-one to eighteen was not narrowly tailored to serve any compelling interest.

This Court should reverse the United States Court of Appeals' decision on this issue.

D. Summary Dismissal Analysis

On June 10, 2002, the Board of Immigration Appeals ("Board") summarily affirmed without opinion the decision of the Immigration Judge. The Board did not review the record of record proceedings, nor did the Board assign a three-member panel to review Petitioner's appeal. Rather, the Board issued a two-line decision summarily affirming the Immigration Judge's decision without opinion.

The U.S. Court of Appeals has held that an agency abuses its discretion when it fails to articulate it reasons for its decision. *Rodriguez-Matamoros v. INS*, 86 F.3d 158,

161 (9th Cir. 1996). Further, in *Chen v. Ashcroft*, ___ F.3d ___ (9th Cir. No. 02-73473, Aug. 10, 2004)(9th Cir. 2004), the Ninth Circuit Court of Appeals held that the BIA erred in summarily affirming a decision of the Immigration Judge because the legal issue presented was not squarely controlled by existing BIA or federal court precedent. Petitioner submits that the same situation exists in this case. By issuing a summary decision without stating any reasons for its decision, the Board clearly violated Petitioner's rights under the Due Process Clause contained in the Fifth Amendment of the U.S. Constitution.

This Court should reverse the United States Court of Appeals' decision on this issue.

Conclusion

For the reasons set forth above, Petitioner Muazzam Mohammad Lateef respectfully prays that this Court grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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APPENDIX

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APR 01 2004

CATHY A. CATTERSON,
CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MUAZZAM MOHAMMAD LATEEF, Petitioner, v. JOHN ASHCROFT, Attorney General, Respondent.	)	No. 02-7203 Agency No. A36-170-122 MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 29, 2004**
Pasadena, California

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

BEFORE: D.W. NELSON, FERNANDEZ, and KLEINFELD, Circuit Judges.

Muazzam Mohammad Lateef petitions for review of the Board of Immigration Appeals summary affirmance without opinion pursuant to 8 C.F.R. §3.1(a)(7) of an Immigration Judge's removal order. On appeal, Lateef claims that: (1) the Immigration Judge erred by denying Lateef's request to withdraw his plea to the Notice to Appear; (2) the Immigration Judge erred by admitting into evidence several exhibits over Lateef's objections; (3) Lateef is entitled to derivative United States citizenship, since former Section 321(a) of the Immigration and Nationality Act, 8 U.S.C. § 1432(a) (repealed 2000), violates due process and equal protection; and (4) the INS's streamlining provisions violate due process.

Substantial evidence supports the Immigration Judge's disposition of the first two of these claims. *See Vera-Villegas v. INS*, 330 F.3d 1222, 1230 (9th Cir. 2003). The Immigration Judge denied Lateef's motion to withdraw his admissions since Lateef was represented by counsel

when he made the admissions. It is well-settled that "[p]etitioners are generally bound by the conduct of their attorneys, including admissions made by them, absent egregious circumstances." *Magallanes-Damian v. INS,* 783 F.2d 931, 934 (9th Cir. 1986) (holding that petitioners were not denied due process by their counsel's admission of deportability on their behalf); *See also Matter of Velasquez,* 19 I & N. Dec. 377, 382 (1986) ("[T]here is a strong presumption, which the respondent did not proffer any evidence to overcome, that [counsel's] decision to concede deportability in the motion was a reasonable tactical decision."). Lateef offers no evidence that the circumstances surrounding his prior admissions were egregious.

The Immigration Judge also properly admitted Exhibits 2, 5, and 6 into evidence, despite Lateef's objections. Each of these exhibits was properly certified by an INS officer. *See Espinoza v. INS,* 45 F.3d 308, 310 (9th Cir. 1995) (holding that such certification conforms to Fed. R. Civ. P. 44 and 8 C.F.R. § 287.6(a)). "[I]nformation on an authenticated immigration form is presumed to he reliable in the absence of evidence to the contrary presented by the alien." Id. at 310. Lateef offers no evidence to undermine the reliability of these documents.

Lateef next argues that former Section 321 of the INA, which allowed a child born outside the United States of alien parents to become a citizen upon naturalization of both parents "while such child is under the age of eighteen years," 8 U.S.C. § 1432 (repealed 2000), is unconstitutional since it presents "an irrational distinction" based on age "between similarly-situated noncitizens." However, several courts--including the Ninth Circuit--have upheld the derivative citizenship provision against due process and equal protection challenges. *See, e.g., Barthelemy v.*

Ashcroft, 329 F.3d 1062, 1065-68, (9th Cir, 2003) (upholding 8 U.S.C. § 1432 against petitioner's claim that it irrationally classifies aliens seeking citizenship based on the former marital status of alien's parents and impermissibly discriminates on the basis of gender); *Hein v. INS*, 456 F.2d 1239, 1239-40 (5th Cir. 1972) (upholding former 8 U.S.C. § 1432 against petitioner's claim that its differentiation between natural and adopted children is invidious discrimination). In *Barthelemy*, we observed that "Congress has nearly plenary power to establish qualifications for citizenship" and that "[w]e therefore must uphold the constitutionality of § 321(a) if a 'facially legitimate and bona fide reason' supports the distinction made by the statute." 329 F.3d at 1065 (quoting *Fiallo v. Bell*, 430 U.S. 787, 794-95 (1977)).

As the government points out, there is a clear rational basis for Congress to select age 18 as a cutoff for derivative citizenship, since this is the age at which a parent's legal guardianship and control usually ends. This is also the age at which an individual assumes several rights and obligations of citizenship, including eligibility for the draft and acquisition of the right to vote and enter certain types of contracts. These are facially legitimate and bona fide reasons supporting the age distinction drawn in the statute; therefore, the derivative citizenship provision is constitutional.

Lateef s final claim, that the INS's streamlining provisions violate due process, has been foreclosed by our recent decision in *Falcoln Carriche v. Ashcroft*, 350 F.3d 845, 851 (9th Cir. 2003).

PETITION DENIED.

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 02-72039
CT/AG#: A36-170-122

MUAZZAM MOHAMMAD LATEEF
Petitioner

v.

JOHN ASHCROFT, Attorney General
Respondent

Upon Petition for Review of a Decision of the
Board of Immigration Appeals

THIS CAUSE came on to be heard on the Transcript of the Record from the Immigration and Naturalization Service and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the petition for review of the said decision of the Board of Immigration appeals in this cause be, and hereby is DENIED.

Filed and entered 04/01/04.

U.S. Department of Justice

Decision of the Board of Immigration Appeals

Executive Office for Immigration Review

Falls Church, Virginia

File: A36-170-122 - Los Angeles

Date: JUN 10 2002

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kawamura, Scott K., Esq.

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 3.1(a)(7).

s/ ROGER PAULEY
FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Los Angeles, California

File No. A 36 170 122 October 16, 1998

In the Matter of

MUAZZAM MOHAMMED LATEEF,	)	IN REMOVAL
	)	PROCEEDINGS
Respondent	)	

CHARGE: Section 237(a)(1)(A) in that at time of admission, the respondent was within one or more of the classes of aliens inadmissible by law existing at such time, to wit: liens who had been ordered removed under Section 212(a)(9)(A)(1) of the Act and again seek admission within five years of the date of such removal without obtaining consent from the Attorney General.

APPLICATION: None.

ON BEHALF OF RESPONDENT:
Scott Kawamura, Esquire

ON BEHALF OF RESPONDENT:
Carrie Harlin, Esquire

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

The Respondent is a male who is alleged, in the Notice to Appear, to be a native of Pakistan arid a citizen of Canada. The United States Immigration and Naturalization Service has brought these removal proceedings against the Respondent pursuant to the authority contained in Section 240 of the Immigration and Nationality Act. Proceedings were commenced with the filing of the notice to Appear with the Immigration Court. See Exhibit Number 1; 8 CFR 3.14(a).

The respondent, represented by former counsel, did plead to the Notice to Appear after admitting that it was properly served and waiving a formal reading. The pleading denied Allegation Number 4, which reads "YOU are not a citizen or national of the United States," and then admitted Allegations 5, 6, 7, 8 and denied deportability based on the claim for united States citizenship.

At today's proceeding, the respondent, through Counsel, has requested that his pleading to allegations 5, 6, 7 and 8 be withdraw-a and that he be allowed to deny 5, 6, 7 and B.

With respect to the prior admissions to the allegations in the Order to Show Cause, I do not find

sufficient cause in this case to allow the respondent to withdraw his pleadings to allegations 5 through B. It is clear, under the precedent of Matter of Velasquez, which is 19 I&N Decision 377 (BIA 1986), that the Respondent was duly represented and is bound by Counsel's prior decision to admit allegations 5 through 8.

With respect to his claim of citizenship, the denial to Allegation Number 4, there is no presumption of citizenship in immigration proceedings. See INS v. Lopez-Mendoza, 468 U.S. 1032, 1984, United States ex rel. Bilokwinsky v. Tod, 263 U.S. 149, (1923). A person born abroad is presumed to be an alien until he or she shows otherwise. See Murphy v. INS, 54 F.3d 605 (9th Circuit, 1995); Corona Palomero v. INS, 661 F.2d 814 (9th Circuit, 1981). Matter of Tijerina-Villarreal, 13 I&N Dec. 327 (BIA 1969). Based on the respondent's admission to allegation Number 5 and no proof to the contrary, I would find that the presumption operates to sustain alienage in this case.

The respondent originally alleged citizenship of the United States. He now, through Counsel, admits that he cannot prove United States derivative citizenship although challenges the application of Section 321 of the I&N on constitutional grounds. This Court, as recognized by Counsel for the respondent, does not have authority to find that section unconstitutional and the respondent admits under Section 321 that he cannot show that his father was naturalized in time for the respondent to meet a burden of proof of citizenship in the United States. However, I do find that alienage has been established on this case.

The respondent was given an opportunity, alienage having been established, to show the time, place and manner of his entry into the United States, see INA Section 291, and indicated that he had no proof to show time, place

and manner of entry. He is, therefore, presumed to be in the United States in violation of law under Section 291.

Further, the admission to Allegations 6, 7 and 8 are sufficient to establish that the respondent did reenter the United States subsequent to a valid deportation. Therefore, alienage having been established and allegations 6, 7 and 8 being admitted, the respondent is deportable as charged in the Notice to Appear.

Even if I were to allow the respondent to withdraw the allegations at 5, 6, 7 and 8, deportability has been established by the record through the submission of the Immigration and Naturalization Service.

The Exhibits 2 and 6 primarily, but also the Exhibits at 3, 4 and 5 in that there has been a final order of deportation, all support the allegation of alienage. Exhibit 2 is a copy of the respondent's immigrant, Visa and alien registration. He does not deny that this relates to him and simply disputes the date of birth as contained in the immigrant Visa and alien registration. This is a signed and sworn immigrant Visa and alien registration and I do not have proof to find that the 1966 date is not accurate, although that is not primarily relevant to the issue of finding alienage based on Exhibit Number 2.

Exhibit Number 6 is also a document customarily relied on in immigration proceedings to establish the truth of what is asserted therein. Here, the respondent has contested only the date of re-entry into the United States as the report does not, in his estimation, specifically delineate when or how the arresting officer or preparing officer determined the date of re-entry into the United States. Either way, alienage is established based on the record of deportable alien as well. And also, again, I simply mention that I do have a final order of deportation and subsequent documents showing that the respondent previously

admitted alienage in proceedings before the presiding Immigration Judges in Texas which is further proof in this case of alienage.

Again, alienage being established on the documentation, the burden would shift to the respondent under Section 291 and he has already indicated that he does not meet this burden under Section 291.

Further, aside from Section 291, the documentation at Exhibits 3, 4, 5 and 6 clearly support the allegations that the respondent was in fact ordered deported by the Immigration Judge. The original of Exhibit Number 3 is contained in the first file relating to the respondent which was obtained from the Federal Records Center and will travel along with the current NTA file. Exhibit 3 reflects a valid order of deportation to the country of Pakistan.

Exhibit 4 was properly certified and relates to the respondent, reflects the respondent's subject to removal/deportation from the United States under the charges in the Order to Show Cause in the prior file, relates to the respondent both by name, photograph, fingerprint and signature. And the document does reflect, on the second page, that the departure was witnessed by the INS official.

Exhibit 5 is a specific warning to the respondent ordered removed or deported that at any time because he has been found inadmissible or excludable under Section 212 of the Act or deportable under Section 241 or 237 of the Act and ordered deported or removed from the United States and has been convicted of a crime designated as aggravated felony, that he is prohibited from re-entering, attempting to re-enter or being in the United States absent specific conditions.

And then finally, at Exhibit 6, there is the record of deportable/inadmissible alien which again reflects the prior

order of deportation, the deportation itself and the re-entry of the respondent into the United States in violation of law. Based on Exhibits 3, 4, 5 and 6, I find that even if the respondent were allowed to withdraw the admissions to Allegations 6, 7 and 8, that Allegations 6, 7 and 8 are proven based an the documentation submitted by the Immigration and Naturalization Service.

Therefore, alienage having been established, the fact that the respondent was ordered deported by the Immigration Judge having been established, the fact that the respondent was in fact removed from the United States based on the charge in the Order to Show Cause and the fact that the respondent re-entered the United States without receiving permission, satisfy the burden of proof in showing that the Respondent is in fact removable as charged under Section 237(a)(1)(A) based on 212(a)(9)(A)(i) of the Immigration and Nationality Act.

No other relief was requested by the respondent and at this time, I therefore find it appropriate to enter the following order:

ORDER

IT IS HEREBY ORDERED that the respondent be removed from the United States to Canada with an alternate order of removal to Pakistan on the charge contained in the Notice to Appear.

Warning to the respondent. Sir, you have been issued an order of removal from the United States. I'm required to inform you that failure to comply with the removal order means that you could be fined $500 for every day that you are in noncompliance, see Section 274(d) of the Act. In addition, sir, as you are removable for being deportable under Section 237 of the Act, if you were to fail to comply with your removal order, you would also be subject to facing additional fines and/or imprisonment as

described in Section 243(a) of the Immigration and Nationality Act.

HENRY IPEMA
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
2320 LA BRANCH ST., RM 2235
HOUSTON, TX 77004
SITTING AT HOUSTON, TEXAS

FILE: A 36-170-122

IN THE MATTER OF:

IN DEPORTATION PROCEEDINGS PURSUANT TO 8 U.S.C. 1100 et seq. (The Immigration and Nationality Act)

LATEEF, MUAZZAM MOHAMMAD
RESPONDENT/APPLICANT

MEMORANDUM OF DECISION AND ORDER

This memorandum is a summary of the oral decision rendered at HOUSTON, TEXAS. If the decision is appealed, the full text of the decision and order will be transcribed and provided to the parties.

_____ The Respondent was granted voluntary departure on or before _____with an alternate order of deportation to _____ or _____.

__X__ The Respondent was ordered deported to _ Pakistan _ or _____.

_____ The Respondent was granted/denied Suspension of Deportation under Section 244(a) of the Act.

_____ The Applicant has been ordered excluded and

deported.

_____ The Applicant is admitted as a _____ nonimmigrant/immigrant.

_____ The Applicant's request for leave to withdraw the application for admission to the United States was granted/denied.

_____ The Respondent/Applicant was granted/denied Asylum/Withholding deportation under Section 208(a)/243(h) of the Act.

_____ The Respondent/Applicant was granted/denied adjustment of status under Section 245 of the Act.

_X_ The Respondent/Applicant was granted/(denied) relief under Section 212(C).

_____ The Respondent/Applicant was granted a waiver under Section _____ of the Act Proceedings were terminated.

_____ The Respondent's adjustment of status was/was not rescinded under Section 246 of the Act.

_____ The proceedings were terminated.

_____ The Service/Respondent/Applicant has/have waived/reserved appeal. If appeal has been reserved, appeal must be filed by _____.

_____ Other _____
_____.

Date: 10/22/90

Appeal waived by

Service
Reserved by Respondent
Due: 11/1/90

s/ Clarease Mitchell Rankin
Immigration Judge
CLAREASE RANKIN

FILED
MAY 25 2004

CATHY A. CATTERSON,
CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MUAZZAM MOHAMMAD LATEEF, Petitioner, v. JOHN ASHCROFT, Attorney General, Respondent.	)	No. 02-7203 Agency No. A36-170-122 ORDER

BEFORE: D.W. NELSON, FERNANDEZ, and KLEINFELD, Circuit Judges.

The Petition for Panel Rehearing and the Request for Stay of Deportation filed on May 17, 2004, are hereby DENIED.

SO ORDERED.